

**CITY PLANNING & ZONING COMMISSION  
MEETING MINUTES  
September 22, 2010**

The Bismarck Planning & Zoning Commission met on September 22, 2010, at 5:00 p.m. in the Tom Baker Meeting Room in the City-County Office Building, 221 North 5<sup>th</sup> Street. Vice Chairman Armstrong presided.

Commissioners present were Mel Bullinger, Jo Conmy, Jack Hegedus, Curt Juhala, Vernon Laning, Ken Selzler, Lisa Waldoch and John Warford.

Commissioner Wayne Yeager was absent.

Staff members present were Carl Hokenstad – Community Development Director, Kim Lee – Planning Manager, Gregg Greenquist – Planner, Jason Tomanek – Planner, Kimberley Gaffrey– Office Assistant III and Charlie Whitman – City Attorney.

Others present were Brian Eiseman – 128 Soo Line Drive, Brent and Trish Levinson – 2830 Langer Lane, Steve Iverson – 4265 45<sup>th</sup> Street South #200, Fargo, Ron Haugom – 1942 Jackson Avenue, John Hauck – 6420 TJ Lane, Mark Lardy – 5304 Walker Drive and Steven Langlie – 1701 East Capitol Avenue.

**MINUTES**

Vice Chairman Armstrong called for consideration of the minutes of the August 25, 2010 meeting.

**MOTION:** Commissioner Laning made a motion to approve the minutes of the August 25, 2010 meeting as received. Commissioner Selzler seconded the motion and it was unanimously approved with Commissioners Armstrong, Bullinger, Conmy, Hegedus, Juhala, Laning, Selzler and Waldoch voting in favor of the motion.

**CONSIDERATIONS –**

**ZONING CHANGE FROM R5, R10 & RM15 TO R5 & R10 AND PRELIMINARY PLAT –  
ROCKY HEIGHTS ADDITION**

**ZONING CHANGE FROM A TO RR AND PRELIMINARY PLAT – WOODRUFF  
SUBDIVISION**

**ZONING CHANGE FROM R10 TO R5 – WHISPERING POINTE**

Vice Chairman Armstrong called for consideration of the following consent agenda items:

- A zoning change from R5-Residential, R10-Residential, RM15-Residential zoning districts to R5-Residential and R10-Residential zoning districts and preliminary plat for Rocky Heights Addition. The property is 12 lots in one block on 10 acres located in north Bismarck, along the east side of North Washington Street, north of Century Avenue between the Juniper Drive and Aspen Drive intersections (SW¼ of Section 21, T139N-R80W/ Hay Creek Township).

- A zoning change from A-Agricultural zoning district to RR-Residential zoning district and preliminary plat for Woodruff Subdivision. The property is 1 lot in one block on 2.07 acres located west of 66<sup>th</sup> Street NE, south of 71<sup>st</sup> Avenue NE and north of Rocky Road (part of the NE¼ of Section 7, T139N-R79W/Gibbs Township).
- A zoning change from R10-Residential zoning district to R10-Residential and R5-Residential zoning district for Whispering Pointe (a replat of Lot 2, Block 1, Whispering Bay) and the adjacent Lot 1, Block 1, Whispering Bay. The property is located along the west side of Langer Lane between Mills Avenue and Larson Road.

**MOTION:** Commissioner Selzler made a motion to approve the consent agenda. Commissioner Hegedus seconded the motion and it was unanimously approved with Commissioners Armstrong, Bullinger, Conmy, Hegedus, Juhala, Laning, Selzler and Waldoch voting in favor of the motion.

Commissioner Warford arrived at the meeting.

### **FINAL CONSIDERATION – DETACHMENT – LOT 3, BLOCK 1, WHISPERING BAY**

Vice Chairman Armstrong called for the final consideration for the detachment for Lot 3, Block 1, Whispering Bay. The property is located along the west side of Langer Lane between Mills Avenue and Larson Road.

Ms. Lee provided an overview of the request and listed the following findings for the detachment:

1. The City and other agencies are able to provide necessary public services, facilities and programs to serve the property.
2. The proposed detachment would not adversely affect property in the vicinity.
3. The proposed detachment is not consistent with the general intent and purpose of the zoning ordinance. In particular, the lot proposed for detachment does not meet the minimum lot size of 65,000 square feet for a rural residential lot.
4. The proposed zoning change is not consistent with the master plan, other adopted plans, policies and accepted planning practice. In particular, the detachment of property that is readily serviceable with municipal utilities is not consistent with previous City actions and established policy.

Ms. Lee then listed the following additional information:

1. This property was purchased by the Levinsons during the process of platting Whispering Bay and they consented to the property being included in the plat. No objection to the annexation of this property was voiced by the Levinsons during the approval process for Whispering Bay.
2. Municipal utilities are available in Langer Lane and could be extended to this property through a utility easement in Langer Way in the Whispering Pointe plat. It is our

understanding that utilities will be installed in Langer Way yet this fall or next spring/early summer.

3. The minimum lot size in the RR – Residential zoning district is 65,000. This property was originally platted when the minimum lot sizes varied based on soil conditions.
4. County tax records indicate that the property taxes for this property were \$6,655.29 in 2006, \$6,845.20 in 2007, \$7,184.30 in 2008 and \$5935.53 in 2009 (which included a value reduction based on flood damage). A building permit for an addition to the home on the property was issued in late 2008. As the addition was not started until after the February 1<sup>st</sup> assessment date for 2009, it did not show up as an increase in value until the 2010 assessment, which is also the first assessment done by the City. The County assessed the value of this property at \$513,200 in 2008 and \$559,400 in 2009. The City's 2010 assessed value of this property is \$632,100.

Ms. Lee said based on the above findings, staff recommends denial of the detachment for Lot 3, Block 1, Whispering Bay.

Brent Levinson said he purchased his property in October of 2008 as a county parcel and it was annexed as part of the Whispering Bay development in 2009. He went on to say that they did not want to annex to the City, however, did not have a choice. Mr. Levinson said the reason his property was annexed was to expedite the process for the Whispering Bay plat and that is now completed. He continued by saying his lot does not have any covenants, he does not receive any city services and if his home was connected to city sewer there would be a significant disruption to his home because of having to trench 150 feet through the middle of his yard. Mr. Levinson stated that he had two assessments on his property. The first one was by the County at the end of 2009 and the other by the City at the beginning of 2010 because he finished building a shop. He commented that the taxable value on his home with the County increased \$90,000 and even though there may have been a value reduction because of flood damages, it was at a nominal rate compared to everyone else in Fox Island because he did not have flood damage. Mr. Levinson said the people that are around him are considered in the County and he will be the only property that will face anywhere from \$18,000-\$22,000 for the city road being built for Whispering Bay. He added that he thinks this is very unfair. Mr. Levinson concluded by saying he should be put back in the County where the property belongs and grant his request for detachment.

**MOTION:** Commissioner Waldoch made a motion to approve the detachment for Lot 3, Block 1, Whispering Bay. Commissioner Laning seconded the motion with Commissioners Armstrong, Conmy, Juhala, Laning, Selzler, Waldoch and Warford voting in favor of the motion and Commissioners Bullinger and Hegedus voting against. The motion passed 7-2.

## **PUBLIC HEARING – MINOR SUBDIVISION FINAL PLAT – HAY CREEK INDUSTRIAL REPLAT**

Vice Chairman Armstrong called for the public hearing for the minor subdivision final plat for Hay Creek Industrial Subdivision Replat. The property is located along the north side of 71<sup>st</sup> Avenue NE, east of 19<sup>th</sup> Street NE.

Ms. Lee provided an overview of the request and listed the following findings for the minor subdivision final plat:

1. The proposed plat meets the criteria for a minor subdivision final plat.
2. All technical requirements for approval of a minor subdivision final plat have been met.
3. The storm water management plan amendment has been approved by the City Engineer.
4. The proposed minor subdivision is not completely compatible with adjacent land uses. Adjacent land uses include agricultural to the north, south, east and west. Rural residential uses are located across the railroad tracks southeast of this subdivision and approximately ¼ mile to the east on both the north and south sides of 71<sup>st</sup> Avenue NE.
5. In order to mitigate the visual impact of the development on nearby rural residential uses, a 30-foot landscape easement was included along the eastern edge of the underlying plat and a 15-foot landscape easement was included along the northern edge. These easements have also been included in the proposed replat. In addition, the PUD ordinance includes provisions for the planting of these buffer yards and installing additional landscaping along 71<sup>st</sup> Avenue and 19<sup>th</sup> Street in conjunction with development of the site.
6. The proposed minor subdivision will be located near the intersection of two major roadways (US Highway 83 and Highway 1804), will be temporarily served by South Central Regional Water District and will be annexed to the City when municipal services can be provided to the property; therefore, the proposed subdivision will not place an undue burden on public services.
7. The proposed subdivision is consistent with the general intent and purpose of the zoning ordinance and subdivision regulations.
8. The proposed subdivision is consistent with the master plan, other adopted plans, policies and accepted planning practice.

Ms. Lee then provided the following additional information:

1. This property is located within a Planned Unit Development. When the PUD was approved in December 2008, a provision was included in the PUD ordinance indicating that this property could be further subdivided through the minor subdivision plat process. The PUD ordinance will continue to apply to all of the property included in the proposed replat.
2. The property is currently in violation of the PUD ordinance because an outdoor storage area was created too close to 19<sup>th</sup> Street NE. The fence installer has been contacted and will move the fence back to the required 40-foot setback; however, we have not been notified that this has occurred.
3. The proposed subdivision is located within the Urban Service Area Boundary (USAB) and is subject to those development requirements.
4. Hay Creek Township has no objection to the plat.

Ms. Lee said based on the above findings, staff recommends approval of minor subdivision final plat of Hay Creek Industrial Subdivision Replat, with the understanding that the minor subdivision final plat will not be forwarded to the Board of City Commissioners for final action until the PUD violation is resolved.

Vice Chairman Armstrong opened the public hearing for the minor subdivision final plat for Hay Creek Industrial Subdivision Replat.

Steven Langlie, with Houston Engineering, said he believes the fence has been moved.

Vice Chairman Armstrong closed the public hearing.

**MOTION:** Based on the findings contained in the staff reports, Commissioner Laning made a motion to approve the minor subdivision final plat for Hay Creek Industrial Subdivision Replat, with the understanding that the request will not be forwarded to the Board of City Commissioners for final action until the PUD violation is resolved (fence moved). Commissioner Selzler seconded the motion and it was unanimously approved with Commissioners Armstrong, Bullinger, Conmy, Hegedus, Juhala, Laning, Selzler, Waldoch and Warford voting in favor of the motion.

### **PUBLIC HEARING – RURAL RESIDENTIAL LOT SPLIT – LOT 23B, BLOCK 3, FALCONER ESTATES**

Vice Chairman Armstrong called for the public hearing for the rural residential lot split for Lot 23B, Block 3, Falconer Estates. The property is located along the south side of Apple Creek Drive between Falconer Drive and Walker Drive.

Ms. Lee provided an overview of the request and listed the following findings for the rural residential lot split:

1. All technical requirements for approval of a rural residential lot split have been met.
2. The resulting parcels will not meet the minimum area requirements (65,000 square feet) for lots within the RR – Residential zoning district and the western parcel will not meet the minimum lot depth requirement (200 feet).
3. The proposed lot split is compatible with adjacent land uses. While this lot is one of several lots in the northwest corner of this subdivision that is larger, the majority of lots within Falconer Estates are similar in size to the parcels resulting from the proposed lot split.
4. As rural water service is in place and Apple Creek Drive is improved, the proposed lot split and the resulting parcels will not place an undue burden on existing public services and facilities.
5. The proposed lot split is not compatible with adopted plans, policies and accepted planning practice. In particular, it will create lots that do not meet the current minimum lot area requirements for a parcel in the RR – Residential zoning district.

Ms. Lee then provided the following additional information:

1. Falconer Estates was platted when the minimum lot sizes ranged from 40,000 square feet to 85,000 square feet, depending on soil conditions. The plat contains a variety of lot sizes, but most are under the current 65,000 square foot requirement.
2. A plat of irregular description was recorded in March 1996 to create Lots 23A and 23B. This request would further split Lot 23B.
3. If approved, the resulting parcels would be subject to the City's policy for development of substandard lots, a copy of which is attached.

Ms. Lee said based on the above findings, staff recommends denial of the rural residential lot split to split Lot 23B, Block 3, Falconer Estates into two parcels, an eastern parcel of 1.2 acres & a western parcel of 1.24 acres. If the Planning & Zoning Commission decides to approve the rural residential lot split, staff recommends that the above findings be amended to reflect the action and the following conditions be added: 1) a soils test shall be completed to determine the soils present and whether or not a septic system can be installed to meet the needs of any future development on the western parcel, as required by the City's policy on the development of substandard lots, and 2) if the soils test indicates that the western lot could be developed, a plat of irregular description must be prepared and recorded with the County Recorder's Office to describe the resulting parcels.

Vice Chairman Armstrong opened the public hearing for the rural residential lot split for Lot 23B, Block 3, Falconer Estates.

Mark Lardy said that if approved, the lots will be approximately 52,000 square feet and 54,000 square feet, which is just below the 65,000 square foot requirement of zoning requirement, however, well above the 40,000 requirement of the North Dakota State plumbing law. He went on to say that majority of the other lots in Falconer Estates are below the 65,000 square foot requirement and he would like the Bismarck Planning & Zoning Commission to consider the lot split.

Vice Chairman Armstrong closed the public hearing.

**MOTION:** Based on the revised findings contained in the staff reports, Commissioner Hegedus made a motion to approve the rural residential lot split to split Lot 23B, Block 3, Falconer Estates into two parcels, an eastern parcel of 1.2 acres & a western parcel of 1.24 acres, with the following conditions; 1) a soils test shall be completed to determine the soils present and whether or not a septic system can be installed to meet the needs of any future development on the western parcel, as required by the City's policy on the development of substandard lots, and 2) If the soils test indicates that the western lot could be developed, a plat of irregular description must be prepared and recorded with the County Recorder's Office to describe the resulting parcels. Commissioner Selzler seconded the motion and it was unanimously approved with Commissioners Armstrong, Bullinger, Conmy, Hegedus, Juhala, Laning, Selzler, Waldoch and Warford voting in favor of the motion.

## **MAJOR PUD AMENDMENT – LOT 1, BLOCK 1, CAPITOL VIEW ADDITION**

Vice Chairman Armstrong called for the public hearing for the Major PUD Amendment for Lot 1, Block 1, Capitol View Addition. The property is located along the east side of State Street just south of Divide Avenue.

Mr. Tomanek indicated that this is a request to amend/revise the existing PUD to change the use of a three-story hotel as the only permitted use.

Mr. Tomanek provided an overview of the request and listed the following findings for the Major PUD Amendment:

1. The proposed use would be compatible with adjacent land uses. Adjacent land uses include the Capitol grounds to the west, commercial uses to the north, offices and apartments to the south and single and two-family residential to the east. The orientation of the proposed 45'5", 3-story hotel would be a minimal impact on the adjacent single and two-family dwellings to the east due to the east-west alignment of the proposed building which provides a north-south exposure for the 82 rooms within the hotel.
2. The property is already annexed; therefore, the zoning change will not place an undue burden on public services
3. The proposed PUD amendment and subsequent development would not adversely affect property in the vicinity.
4. The proposed PUD amendment and subsequent development is consistent with the general intent and purpose of the zoning ordinance.
5. The proposed PUD amendment and subsequent development is consistent with the master plan, other adopted plans, policies and accepted planning practice.

Mr. Tomanek said based on the above findings, staff recommends approval of the major PUD amendment for Lot 1, Block 1, Capitol View Addition to allow a 3-story, hotel as outlined in the PUD amendment.

Vice Chairman Armstrong opened the public hearing for major PUD amendment for Lot 1, Block 1, Capitol View Addition.

No public comment was received.

Vice Chairman Armstrong closed the public hearing.

**MOTION:** Based on the findings contained in the staff report, Commissioner Juhala made a motion to approve the Major PUD Amendment for Lot 1, Block 1, Capitol View Addition, as outlined in the PUD amendment document. Commissioner Conmy seconded the motion and it was unanimously approved with Commissioners Armstrong, Bullinger, Conmy, Hegedus, Juhala, Laning, Selzler, Waldoch and Warford voting in favor of the motion.

**PUBLIC HEARING – SPECIAL USE PERMIT FOR TRACT 1 OF LOTS 1 AND 2, BLOCK 1, ELKS ADDITION (710 WASHINGTON STREET)**

Vice Chairman Armstrong called for the public hearing for a special use permit to allow a drive-through window in conjunction with a bank on Tract 1 of Lots 1-2, Block 1, Elks Addition. The property is located along the south side of West Arbor Avenue and the west side of South Washington Street (710 South Washington Street).

Mr. Tomanek provided an overview of the request and listed the following findings for the special use permit:

1. A bank with a drive-through window is allowed as a special use in the CG zoning district, provided specific conditions are met. The proposed drive-through window meets all six provisions outlined in Section 14-03-08(4)(g) of the City Code of Ordinances (Zoning).
2. The proposed special use would not adversely affect the public health, safety and general welfare.
3. The proposed special use would not be detrimental to the use or development of adjacent properties.
4. The use would be designed, operated and maintained in a manner that is compatible with the appearance of the existing character of the surrounding area.
5. Adequate public facilities and services are in place.
6. This use would not cause a negative effect, when considered in conjunction with the cumulative effect of other uses in the immediate vicinity.
7. Adequate measures have been taken to minimize traffic congestion in the public streets and provide for appropriate on-site circulation of traffic, in particular, adequate off-street parking would be provided.
8. The City Traffic Engineer has reviewed the proposed site plan and has no opposition to the special use permit.

Mr. Tomanek said that based on the above findings, staff recommends approval of the special use permit to allow a drive-through window in conjunction with a bank on Tract 1 of Lots 1-2, Block 1, Elks Addition, with the following conditions: 1) the construction of a drive-through window must meet all applicable requirements for such a use in the CG zoning district, and 2) development of the site generally conforms to the site plan submitted with the application.

Vice Chairman Armstrong opened the public hearing for the special use permit on Tract 1 of Lots 1-2, Block 1, Elks Addition (710 South Washington Street).

Steve Iverson said he is representing Paces Lodging Corporation and is available for any questions.

Vice Chairman Armstrong closed the public hearing.



**MOTION:** Based on the findings contained in the staff report, Commissioner Hegedus made a motion to approve the special use permit allow a drive-through window in conjunction with a bank on Tract 1 of Lots 1-2, Block 1, Elks Addition, with the following conditions: 1) the construction of a drive-through window must meet all applicable requirements for such a use in the CG zoning district, and 2) development of the site generally conforms to the site plan submitted with the application. Commissioner Juhala seconded the motion and it was unanimously approved with Commissioners Armstrong, Bullinger, Conmy, Hegedus, Juhala, Laning, Selzler, Waldoch and Warford voting in favor of the motion.

## **OTHER BUSINESS**

There was no other business.

## **ADJOURNMENT**

There being no further business Vice Chairman Armstrong declared the Bismarck Planning & Zoning Commission adjourned at 5:49 p.m. to meet again on October 27, 2010.

Respectfully submitted,

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Kimberley Gaffrey  
Recording Secretary

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Mark Armstrong  
Vice Chairman